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No. 559.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

PITTSBURGH PLATE GLASS COMPANY and UNITED GLASS AND CERAMIC WORKERS OF NORTH AMERICA, AFL-CIO,
Respondents.

BRIEF OF RESPONDENT, UNITED GLASS AND CERAMIC WORKERS OF NORTH AMERICA, AFL-CIO, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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Questions Presented.

1. Did the Board act arbitrarily in establishing and applying the rule that in any industry other than the four favored ones (basic steel, wet milling, lumber and aluminum) it would pay no attention whatsoever to the nature or degree of integration in the plant involved, the nature or degree of integration in the industry and to the established practice of collective bargaining prevailing in the industry?

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2. Did the Board deprive the Glass Workers Union of due process and the equal protection of the laws by the discrimination practiced by it in always considering the factors of integration and industry practice an absolute bar to craft severance even in new plants in the four favored industries while at the same time refusing to give any consideration to the same factors in the plant involved in this case?

3. If the National Labor Relations Act, as amended does permit such a discrimination as practiced by the Board in this case, is the Act to that extent unconstitutional?

ARGUMENT.

Although the Court of Appeals in denying enforcement of the Board's Order placed it in the statutory context that the Board by the merely formal application of its rigid craft-severance rule had failed to comply with the statutory duty to determine *in each case* the appropriate unit for collective bargaining, that is not the only approach to this case.

Throughout the proceedings the Glass Workers Union had argued that to deny all craft-severance petitions in all plants (both old and new) in only four industries (basic steel, wet milling, lumber and aluminum) and to grant craft-severance petitions in all other industries is an invalid discrimination and deprives the Glass Workers Union of due process and equal protection of the laws.

Even the Solicitor General concedes that there are a "large number of highly integrated industrial enterprises". (Petition, p. 12).

Why the nature or degree of integration of operations in the plant involved should be considered a decisively material factor against craft severance in only four of the "large number of highly integrated" industries and an utterly immaterial factor in the remaining highly integrated industries is attempted to be justified on only one ground—in the interest of certainty and ease of administration.

This Court has rejected such an argument where it resulted in similar unjust discrimination. *Office Employees International Union* v. *N.L.R.B.*, 353 U. S. 313 (1957), and *Hotel Employees* v. *Leedom*, 358 U. S. 99 (1958). In the first cited case this Court pointed out that to place labor unions in the same category as such nonprofit employers as religious, educational and eleemosynary employers "is entirely unrealistic for the very nature of the excluded nonprofit employers is inherently different from that of labor unions and the reason for such exclusion has no applicability to union activity • • •." Although this Court may recognize the right of the Board to classify industries, plants, and employers into groups, such "classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.' [cases]. The classification • • • must be founded upon pertinent and real differences, as distinguished from irrelevant and artificial ones." *Colgate* v. *Harvey*, 296 U. S. 404 (1935).

We submit that the decision of the Court of Appeals was correct.

Conclusion.

For the reasons stated, the petition for certiorari should be denied.

Respectfully submitted,

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